REASONS FOR GRANTING THE WRIT

1. Nothing in the Labor-Management Reporting and Disclosure Act of 1959 confers jurisdiction on the federal courts to monitor the decisions of the members of the union on how union funds are to be expended. Sub-section 501(a) of the Act, under which the courts below acted, deals with the fiduciary responsibility of the officers of the union and in no way purports to regulate the action of the members of the union on internal union matters.

The entire history of this sub-section, including the Senate investigations preceding its enactment, make it clear that Congress was seeking to protect the members of unions from the unilateral, unauthorized action of their officers.

Congress emphasized this in sub-section 2(b) of the Act of 1959, forming part of the declaration of findings, purposes and policy as follows:

> "(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives."

Sub-section 2(c) relied on by the District Court, does not express a finding or purpose relating to the need to regulate membership action as to internal affairs of the union. Rather, it refers to the outward practices of labor organizations which defeat the policies of the Labor-Management Relations Act of 1947. The 1947 Act had nothing to do

with membership action determining how union funds are expended.

However, the decisions of the courts below have placed the federal courts directly in the business of regulating the internal affairs of unions. Every membership action resulting in the expenditure of union funds, under the rulings below, becomes a matter for federal court supervision at the request of even one dissident member of the union. It can readily be seen that under this interpretation of the Act of 1959, the federal courts will soon have their dockets crowded with internal union disputes, and will have little, if any, time to dispose of other matters.

At a time when the court dockets are already crowded, and where internal union disputes have traditionally been left to the machinery of union remedies, or to the individual state courts, Congress certainly did not intend to so burden the federal courts.

Further, nothing could be more disruptive of the normal functions of labor unions than to have the decisions passed upon by the members of the union on internal affairs constantly being subject to review by the federal courts at the insistence of those who lose out on the voting at the regular membership meetings. Congress in enacting the Labor-Management Reporting and Disclosure Act of 1959 certainly did not intend to strike so fatal a blow at organized labor. Indeed, the language of sub-section 501(a) requires officers of a labor organization to expend the funds of the organization in accordance with the constitution, by-laws, or resolutions of the governing body made thereunder. That is exactly what the petitioners did in the instant case. They expended the funds of the union in accordance with a resolution adopted by the governing body under the constitution of the International Union. Senator Kennedy, one of the architects of the Labor-Management Reporting and Disclosure Act, made clear the right of the membership to decide how the funds of the labor organization were to be expended when he reviewed the report of the Committee

of Conference for the Senate at p. 16415 of the Congressional Record (86th Congress, 1st Sess., September 3, 1959, Vol. 105, No. 154):

> "The bill does not limit in any way the purposes for which the funds of a labor organization may be expended or the investments which can be made. Such decisions should be made by the members in accordance with the constitution and by-laws of their union. Union officers will not be guilty of breach of trust under this section when their expenditures are within the authority conferred upon them either by the constitution and by-laws, or by a resolution of the executive board, convention or other appropriate governing body—including a general meeting of the members—not in conflict with the constitution and by-laws. This is also made clear by the fact that Sub-section 501(a) requires the special problems and functions of a labor organization be taken into consideration in determining whether union officers and other representatives are acting responsibly in connection with their statutory duties. The problems with which labor organizations are accustomed to deal are not limited to bread and butter unionism or to organizations and collective bargaining alone, but encompass a broad spectrum of social objectives as the union may determine."

This same statement was made in the House report on the House version of the bill. Senator McClellan, who had headed up the investigation in the labor and management field, also emphasized that the legislation enacted by the Congress was not intended to interfere with membership action. He stated at page 5857 of the Congressional Record (86th Congress, 1st Sess., April 23, 1959, Vol. 105, No. 62):

> "I may say that there was never any idea of my trying to curb the authority of the members of the union to do whatever the members want to do; rather, it is

my intention to protect the members from having the members of a board or committee vote to do just about anything they want to do, as has been the case in many instances."

Even more important, the draftsmen of the Act stressed that union officials should be able to operate freely under the authority of a resolution passed by the membership, without being charged with the duty to determine whether the membership was acting within the scope of the Union's objective. Congressman O'Hara pointed this out when he stated the following at page 14356 of the Congressional Record (86th Congress, 1st Sess., August 12, 1959, Vol. 105, No. 137):

"Nor is it our intention that the courts, State or Federal, or any other Governmental agency, shall second guess union officers and employees on the question of whether a particular investment or expenditure is included within the 'special problems and functions of a labor organization.' If it is made in accordance with, and for the purpose permitted by, the constitution, by-laws or regularly adopted resolution of the union's constitutional governing bodies, the officer or employee will not be required at his peril to determine whether or not the constitution, by-laws or resolution goes beyond the legitimate purposes and objectives of the organization. To do this would place them in an impossible position and would paralyze the legitimate operations of unions. If an officer or employee of a labor organization failed to invest or expend the union's funds in accordance with the wishes of the membership, he would be guilty of a breach of his duties to the organization, and if he did act in accordance with their wishes, he might at some later time be told by a court of law that he breached the trust placed in him by doing so. The intention of this section is simply that union officers and employees must act as

> the agents of the membership. They must conform their actions to the will of the membership, and they will be held strictly accountable for any loss to the organization or gain to themselves when they do not do so."

It is submitted that the decision of the court below misinterprets the overall purpose of Congress in enacting the Labor-Management Reporting and Disclosure Act of 1959. The court below strikes down the action of the membership of a union regularly taken at a meeting of the union in the name of the Labor-Management Reporting and Disclosure Act of 1959 when that law was passed to restrict the actions of union officials taken without the authority of the union membership.

Thus, the far-reaching effect of the court's decision is that those provisions of the 1959 Act which were adopted to control the actions of officers of unions have been made the basis for monitoring the unions, themselves.

2. The decisions of the courts below violate the letter and the spirit of the Labor-Management Reporting and Disclosure Act of 1959, despite their claim of upholding the letter and spirit of that Act.

As to the "letter" of the Act, no specific provision prohibits the expending of union funds in accordance with the Resolution of September 20. Indeed, sub-section 501 (a) specifically authorizes union officers to spend the funds of the union in accordance with the resolutions of the governing body.

With regard to the "spirit" of the 1959 Act, it is submitted that the legislative history makes it clear that Congress rejected just such a prohibition which the District Court and the Court of Appeals here enforce. The courts below have done what Congress specifically refused to do.

The question of whether union funds should be permitted to be used for the payment of legal fees of officers of the union was directly considered by Congress in the

discussions, debates and conferences leading up to the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 USCA 141. In the Senate Labor Committee, the original Senate version of the bill (The Kennedy-Ervin Bill) was amended through the efforts of the minority by a number of provisions which included sub-section 107 (b). This sub-section prohibited both unions and employers from directly or indirectly paying the fine, or *paying or advancing the cost of defense*, of any of their officers, agents, employees, or representatives, who is indicted or convicted of any violation of any provision of the bill. In the event any such person is acquitted, the section provided that he may be reimbursed for expenditures necessarily incurred in his defense. S. Rep. No. 187, 86th Congress, 1st Sess. (1959); U. S. Code Congressional and Administrative News, 1959 (Special Pamphlet, 86th Congress, 1st Sess.) p. 3031. The minority members in their report to the Senate described this amendment they were successful in having adopted as follows (S. Rep. No. 187, 86th Congress, 1st Sess. (1959); U. S. Code Congressional and Administrative News, 1959, Supra p. 3068):

> "Section 107 (b); our amendment adds a new Subsection prohibiting a union or an employer from paying the fine *or costs of defense of any officer, agent or employee indicted for or convicted for any violation of the act.* If the person is acquitted he may be reimbursed for his expenses. Our amendment therefore prohibits the funds of a union or corporation from being used in such an improper manner." (Emphasis supplied)

The bill passed by the House (The Landrum-Griffin Bill) did not contain a prohibition against the payment by the union of the legal fees of its officers, but instead sub-section 503 (b) of that bill prohibited the payment of

the fine of a convicted officer. The Conference Committee of the Senate and House rejected sub-section 107 (b) which appeared in the Senate version of the bill and adopted the House version as contained in sub-section 503 (b). Thus, the bill as finally passed by Congress and signed by the President into law contained only a prohibition against the payment by the union of the fines of convicted officers and no prohibition against the use of union funds for the payment of the legal fees for the defense of union officers.

The federal courts have consistently held that in construing an act of Congress it is proper to consider the reports of the committees of the two Houses of Congress and of the conference committee of both in the progress of the original bill through its enactment. *S. E. C. v. Sunbeam Gold Mines Co.*, 95 F. 2d 699, 701 (9th Cir. 1938); *S. E. C. v. Robert Collier & Co., Inc.*, 76 F. 2d 939 (2nd Cir. 1935). In the latter case the court said at page 941: "The amendments of a bill in committee are fertile sources of interpretation."

In the leading case of *Pennsylvania Railroad Co. v. International Coal Co.*, 230 U. S. 184 (1913), the Supreme Court of the United States emphasized that the rejection by Congress of a proposed provision when a bill is finally enacted precludes the inclusion of that provision by interpretation later when the act comes before the courts. The Supreme Court said at page 198:

> "The fact that this provision measuring the amount of recovery by rebate was omitted from the act, as finally reported to both Houses and passed, is not only significant, but so conclusive against the contention of the plaintiff. . . ."

In *Atlantic Coastline Railroad Co. v. United States*, 66 Ct. Cl. 378 (1928), the United States Court of Claims interpreting the Revenue Act of 1917 and 1918 found that certain exemptions originally included in the Act of 1917

when it was reported to the House were eliminated later in the final passage of the Act and a substitute provision inserted. The court said on page 393:

> "It seems to us that the elimination of the specific provisions in the Revenue Act of 1917, as first reported to the House, exempting 'employees relief associations operated on a lodge system or local cooperative plan, organized and conducted solely by the members thereof for the exclusive benefit of its members and not for profit,' is very persuasive as indicating the intention that they were not to be exempt. . . ."

The court also quoted with approval the following language on page 393:

> "The rejection by Congress of a specific provision contained in an act as originally reported is most persuasive to the conclusion that the act not be so construed as in effect to include that provision."

Other federal cases showing the weight given by federal courts to committee reports and amendments of bills as they pass through the two Houses of Congress are *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 474 (1921); *United States v. St. Paul, M. & M. Railroad Co.*, 247 U. S. 310, 318 (1918); *Manhattan Properties, Inc. v. Irving Trust Co.*, 291 U. S. 320, 335 (1934); *Connole v. Norfolk and W. Railway Co.*, 216 Fed. 823, 825 (1914).

This legislative history reveals the "spirit" and "intent" of the Act with regard to this specific question.

As the cases cited above demonstrate, this is fundamental law in statutory interpretation. It is respectfully submitted that the grafting of section 107 (b) of the Kennedy-Ervin Bill back onto the 1959 Act is clearly judicial legislation held improper by this Court.

The District Court attempts to avoid this legislative history by emphasizing that The Landrum-Griffin Bill

which was finally adopted by Congress was a substitute for The Kennedy-Ervin Bill and not an amendment of that bill. However, it is clear, that this labor legislation was heavily debated in 1959, and every section of the Kennedy-Ervin Bill was scrutinized with care by the House of Representatives and the Conference Committee. There is no doubt that the rejection of sub-section 107 (b) of the Kennedy-Ervin Bill by the Conference Committee was a deliberate effort of Congress. This is made clear in The Supplementary Views of the House Labor Committee on the Landrum-Griffin Bill as follows (H. R. Rep. No. 741, 86th Congress, 1st Sess. (1959)):

> "It is our considered judgment that the bill reported by our committee is a more workable, effective instrument of reform than S. 1555 [The Kennedy-Ervin Bill]. We have painstakingly treated all of the problems presented by S. 1555 and have made a conscientious attempt to redraft, or to eliminate, unworkable provisions and to tighten up vague and obscure language. We believe our committee successfully hammered out the rough spots in S. 1555, and it is our conviction that the members of both parties on the committee can take pride in the contributions they made to the rewriting of this vital legislation."

3. Essentially, the district court struck down the Resolution of September 20 and enjoined the spending of union funds under that resolution on the ground that the resolution was "ultra-vires." The district court leaves no doubt that if Local 107 did have sufficient interest in the relevant legal actions, the legality of the Resolution of September 20 would be unassailable regardless of the wisdom or propriety of the resolution. The court made this clear when it stated the following (A. 65a):

> "It is true that from the general objectives and purposes of a particular trade union, certain ancillary

powers reasonably necessary for their attainment may be implied.

"In determining whether a particular act falls within the admittedly broad latitude of action, the court must take into consideration all of the factors surrounding, i.e. the stated purpose of the action, its immediate affect, its possible future benefit to the union, etc. This is necessary in order to determine whether the union in the light of the authority derived from the constitution, has a sufficient interest in the action to empower it to so act. If it has, a court of law will not interfere regardless of the wisdom or propriety of the act."

To properly determine whether Local 107 acted within its purposes and objectives in adopting the resolution of September 20, it is necessary to review the action of the union in adopting the resolution itself and the events that led up to that action. In the first place, the legitimate union purpose supporting the validity of the resolution is announced in the very body of the resolution in language which fits squarely within the purposes set out in Article I, §2 of the Constitution of the International Union. Among these purposes is the "instilling confidence, good will and understanding between our membership and their employers, which will have the effect of preventing unnecessary conflicts or serious misunderstandings between the membership and their employers, and which will further encourage cooperation and fair dealing with all employers so as to secure for our membership reasonable hours, fair wages and approved working conditions."

The overwhelming majority of the members attending the regular monthly meeting of September 20 made it very clear that they were not voting to authorize the spending of union funds to pay the legal expenses of the officers merely for the purpose of lending a helping hand to their officers on matters not of deep concern to the union. Rather, they stated that they were voting to spend

union funds for the purpose of protecting the very existence of the union, and its strong bargaining position in regard to its good contracts and good working conditions. This is made explicit in the resolution itself, by the following (A. 28a):

> "Further, since it is obvious that the officers of the union are being subjected to all kinds of pressures and are being subjected to law suits and court costs from a few dissatisfied individuals as well as prosecutors and investigations by public officials who are attempting to break up and destroy our union, be it resolved that Local 107 go on record to help our officers in every way possible in these court matters by having Local 107 bear the legal costs of such actions which are in reality not directed at our officers, but are directed at us the members of Local 107, our good contracts, our good wages, and our good working conditions."

The District Court treated this language as idle words. Indeed, the District Court stated that it could suppose situations where legal actions involving the officers of a union would directly affect the union, and in such situations the union would be justified in spending its funds to defray the legal expenses of the officers. But the court declined to find anything of interest to Local 107 in the relevant legal actions other than the indirect disadvantages accruing to the union through the civil and criminal actions against its officers.

It is submitted that the District Court erred in this finding. Indeed, the record is replete with evidence establishing that Local 107 had a substantial and direct interest in the legal actions involved, quite apart from the interest of the union officials themselves.

This evidence is found in the supplement to Exhibit G of the stipulation of the parties, which appears at pp. 30a-58a of the appendix, which was completely ignored by

the District Court in its opinion. It should be stated by way of explanation that at the hearing on the prayer for the injunction, no testimony was taken, but that the relevant facts were stipulated to by the parties. An integral part of the stipulation were pertinent references to pleadings and other transactions concerning the legal actions involved, demonstrating the nature of the legal actions covered by the resolution.

There can be no doubt but that the most important legal proceedings referred to in this stipulation, and which prompted the Resolution of September 20, were related to the action of the District Attorney of Philadelphia in petitioning for a special investigating grand jury to inquire into the affairs of Local 107, and to the action of the officers of Local 107 in petitioning the Supreme Court of Pennsylvania to prohibit the special grand jury investigation (A. 40a-45a). The officers of Local 107, the petitioners herein, were not defendants charged with looting the treasury of Local 107 in these proceedings, but were the moving parties, seeking to stop the illegal sweeping inquiry into Local 107 activities. This is especially significant since the District Court in its opinion in holding that the union had no interest in the legal actions involved, constantly characterizes these legal actions as proceedings *against* the defendants charging the defendants with stealing the funds of Local 107.

A reading of the petition of the district attorney for a special grand jury investigation (A. 40a-45a), and of the statements of the judge who granted the petition (A. 46a-58a), makes it abundantly clear that the grand jury investigation was aimed not only at the alleged wrongdoings of the officers of the union, but also at the very operation of the union itself and the methods by which it obtained its objectives and certain of its contractual advantages. The district attorney's petition and the judge's charge to the special grand jury accused the union itself—not only the officers of the union—of wrongdoing and

announced a program of inquiry which threatened to expose the union daily to condemnation in newspaper headlines and loss of effectiveness as a bargaining unit.

How can it be reasonably argued that Local 107 did not have a substantial interest in the proceedings relating to the district attorney's petition for a special grand jury investigation? It is submitted that the union was properly concerned over the proposed grand jury investigation which was aimed, according to the district attorney's petition, at finding out whether the union was using illegal or improper methods of obtaining its union objectives and purposes. A grand jury investigation with all of its attending publicity, indiscriminate accusations, and political overtones is not a proper vehicle in Pennsylvania for such an inquiry as the Supreme Court of Pennsylvania subsequently held with regard to the district attorney's petition. *In the Matter of Grace, et al.*, 397 Pa. 254, 154, A. 2d 592 (1959).

The Supreme Court of Pennsylvania in prohibiting the grand jury investigation stated that the district attorney's petition contained mostly "glittering generalities." The Supreme Court specifically found that the proposed inquiry was aimed at the union and indicated the dangers of such an inquiry by the following:

> "But it must remain forever clear that *if one union may be investigated*, so may one store, one bank, one newspaper, one railroad, one local industry. The situation in such a single enterprise would have to be grave indeed to pose a threat to general public safety or to public health at large. A grand jury is not a busybody or an instrument in a reform; it is an arm of the criminal court, one of its emergency weapons to be used sparingly and with great caution." (Emphasis supplied).

It surely is one of the paramount purposes of the union to protect itself from what it considers untrue and unfounded charges of wrongdoing on the part of the union

itself. This is especially true when such charges are presented to an investigating grand jury which has been convened in violation of the law of Pennsylvania. To bar the membership of the union from using the funds of the union for such a purpose is to strip the union of its ability to preserve itself and to render it helpless under attack.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

SAMUEL DASH
Counsel for Petitioners

APPENDIX A

Labor-Management Reporting and Disclosure Act of 1959

TITLE V—SAFEGUARDS FOR LABOR ORGANIZATIONS

FIDUCIARY RESPONSIBILITY OF OFFICERS OF LABOR ORGANIZATIONS

Sec. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

APPENDIX B

Excerpts from Opinion of The District Court

CLARY, *J.*, March 24, 1960.

This is a private suit brought under the recently enacted Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257 (hereinafter referred to as the "Act"). That Act establishes a fiduciary responsibility on the part of officers of a labor organization, [§501(a)] and further provided for a suit in a Federal district court to enforce these responsibilities, [§501(b)]. The present suit has been brought under §501(b) to enforce certain of these duties.

The moving parties are nine rank-and-file members of Highway Truck Drivers and Helpers, Local 107, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as "Local 107"), who were given leave by this Court on November 12, 1959, to file a complaint against the defendants, the governing officers of Local 107.[1] The complaint charged the defendants with a continuing mass conspiracy to cheat and defraud the union of large sums of money—the conspiracy alleged to have begun in 1954 and continued to the present time.

The defendants have yet to answer these very serious charges. Having been unsuccessful in first opposing the plaintiffs' petition for leave of this Court to sue,[2] defendants now move to have the complaint dismissed. They are supported in this motion by counsel for Local 107, which

[1] Benjamin Lapensohn, a named defendant, is not an officer of Local 107 and for reasons hereinafter stated the action will be dismissed as to him.

[2] §501 (b) specifically provides that "No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown . . .".

has been allowed to intervene as a party defendant. This motion to dismiss is presently before the Court along with the plaintiffs' prayer for a preliminary injunction to prohibit the defendants from using union funds to defray the legal costs and other expenses being incurred by the defendants (and several other members of Local 107) in the defense of civil and criminal actions brought against them in the Courts of Pennsylvania and also the present suit in our own Court. The charges in these cases, in essence, grow out of the alleged activities of the defendants complained of here. The question of the preliminary injunction will be taken up after we resolve the motion to dismiss the complaint.

* * * * *

Motion for Injunction

Shortly after the effective date of the Act and the institution of suits, criminal and civil, in the local Courts against the defendants, the union at a regular monthly meeting, with few dissenting votes, adopted a resolution authorizing the union to bear "Legal costs of such actions [against the officers] which are in reality not directed at our officers but are directed at us, the members of Local 107, our good contracts, our good wages and our good working conditions."

The question therefore, which faces us is: Does the expenditure of union funds to pay for legal fees in the defense of both criminal and civil actions brought against the various defendant officers for an alleged conspiracy to cheat and defraud their union of large sums of money constitute a breach of that fiduciary duty imposed upon them by Section 501(a), *supra*, notwithstanding the purported authorization of such expenditures by a resolution of the union membership passed at a regular union meeting?

At a hearing on the preliminary injunction, it was brought out that within the limit of some four or five weeks after the adoption of the resolution the union, pursuant to the resolution, paid upwards of $25,000 to the attorneys

representing the defendants. It is also clear that counsel for the union has advised the officers that such expenditures are proper. We are, therefore, with the payment of those large sums of money already accomplished and threatened further payments about to occur, in a position factually to pass upon the merits of the plaintiffs' contention.[5]

At the outset of our discussion of this question it is necessary to make several general observations as to the construction to be given this new and far-reaching Act of Congress. We do so with caution, aware of the importance of this new legislation in the labor field and of the far-reaching effect which initial judicial interpretation of this Act must necessarily have upon its future.

The purpose of this Act is no secret. It was enacted "to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants and their officers and representatives which distort and defeat the policies of the Labor-Management Relations Act, 1947." §2(c). It came on the wake of Congressional findings of crime and corruption in the labor and management field §2(b).

Section 501, with which we are particularly concerned, is entitled "Fiduciary responsibility of officers of labor organizations." This section, quoted earlier, attempts to define in the broadest terms possible the duty which the new federal law imposes upon a union official. Congress made no attempt to "codify" the law in this area. It appears evident to us that they intended the federal courts to fashion a new federal labor law in this area, in much the same way that the federal courts have fashioned a new substantive law of collective bargaining contracts under §301(a) of the

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[5] There has been no showing on the part of the defendants, nor was it argued in defendants' brief, that defendants are responsible persons who would be able to reimburse the union for funds expended in their behalf. The sums involved are neither nominal nor minimal and in these circumstances the Court holds that a showing of irreparable harm (assuming the illegality of the payments) has been established.

Taft-Hartley Act. See *Textile Workers Union of America v. Lincoln Mills*, 353 U. S. 448 (1957). In undertaking this task the federal courts will necessarily rely heavily upon the common law of the various states. Where that law is lacking or where it in any way conflicts with the policy expressed in our national labor laws, the latter will of course be our guide.

We turn then to Section 501, not expecting to find a detailed command or prohibition as to the particular act complained of, but rather to find a general guide which, properly developed, will lead us to an answer. We feel that that answer here must be in plaintiffs' favor.

In determining whether or not the expenditures now sought to be enjoined violate the fiduciary responsibility of an officer of a labor organization we must necessarily determine the legal effect of the September 20th Resolution. This goes to the heart of the present problem and appears to be the main ground on which the defendants seek to avoid the injunction.

The plaintiffs assert that the Resolution authorizing such expenditures is encompassed within the express prohibition of §501(a) against any "general exculpatory resolution." Although not expressly purporting to absolve the defendants of guilt, plaintiffs argue that the Resolution *in effect* does just this. Unfortunately the Act does not define the phrase "general exculpatory resolution."

The defendants take issue with the plaintiffs' interpretation. They maintain that the Resolution should be taken at face value, i.e., as a pledge of the union's faith in their officers and a pledge of financial aid to defend suits which are in reality directed at the union movement. They point to several remarks made in Congress which make it clear that this provision was not intended to restrict in any way the right of the membership to give a grant of authority—which they allege is all that the September 20th Resolution does.

A plain reading of the last sentence in §501(a) leads me to agree with the defendants, at least in their conclusion.

On the other hand, it is not necessary for a resolution to read "The officers are hereby absolved of all responsibility created by the Act" before a court will strike it down as "exculpatory" under §501(a). Nor must a court accept at face value the stated purpose of a resolution when reason and common sense clearly dictate a different purpose. Nevertheless in my interpretation of §501(a), the Resolution under discussion is *not* one "purporting to relieve any [officer] of liability for breach of the duties declared by this section . . ."

We must distinguish between a resolution which purports to *authorize* action which is beyond the power of the union to do and for that reason in violation of §501(a) when done by an officer (such as the present Resolution) and a resolution which purports to *relieve* an officer of liability for breach of the duties declared in §501(a). At times this distinction may be a fine one. Very often the result will be the same. Nevertheless we feel that such a distinction should be made here unless the "exculpatory" provision is to be read as a mere "catchall" phrase.[6]

We turn then to the question of whether the September 20th Resolution is valid, i.e., conforms with the law of Pennsylvania and the Federal Labor laws. See *International Union of Operating Engineers v. Pierce*, 321 S. W. 2d 914, at 917-18 (Tex. 1959). If it is inconsistent with either, we think it follows that the present expenditures by the defendants violate the provision in §501(a) which imposes upon them a strict duty to "expend [union funds] in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder . . ." —since we read this sentence to authorize only those expenditures made pursuant to a *lawful* bylaw or resolution.

Unfortunately there is a dearth of Pennsylvania case

[6] We might point out in this regard that the original Senate version of the Act (i.e., The Kennedy-Ives Bill, S. Rep. No. 187, 86th Cong. First Session, 1959) contained a somewhat similar prohibition against any exculpatory resolution and *also* contained a clause prohibiting unions from paying the legal fees or fines of any person indicted or convicted of a violation of the Bill.

law on the question of limitations on union expenditures or the corresponding rights of a dissenting union minority. Unlike the analogous doctrine of *ultra vires* acts in the corporate field, the courts have been reluctant to interfere in the internal affairs of a union. *Underwood v. Maloney*, 152 F. Supp. 648 (E. D. Pa. 1957). Nevertheless the principle of majority rule is not *absolute* in an unincorporated association such as a union. *West Virginia Pulp and Paper Co. v. Lewis*, 17 N. Y. Misc. 2d 94, 8 App. Div. 2d 899 (1958). This follows from the fact that each member has a property interest in the assets of the union, and in addition has a contractual right (viewing the constitution, bylaws and resolutions as creating a contractual relationship between the organization and the membership, *Williams v. Masters, Mates & Pilots of America*, 384 Pa. 413 (1956), to have the assets of the union used only for the purposes for which the union was organized. *Maloney v. United Mine Workers of America*, 308 Pa. 251 (1932); *Leatherman v. Wolf*, 240 Pa. 557 (1913); *Beasley v. Allyn*, 12 W. N. C. 90; *Bacon v. Paradise*, 318 Mass. 649, 63 N. E. 2d 571 (1945); *Guy Le R. Stevich, Unincorporated Associations*, (1889) pp. 56, 57; 21 Pennsylvania Law Encyclopedia, Labor §236.

The defendants argue that this Court is precluded from passing upon the merit or propriety of the Resolution in question. With this we agree. But there is a distinction between the merit of a resolution and its legality. The latter question is peculiarly within the competence of a court to pass upon and can not be abandoned finally to the organization. *Maloney v. United Mine Workers of America, supra; Gordon v. Tomei*, 144 Pa. Super. 449 (1941). When a serious question arises as to whether a particular act is within the legitimate aims and purposes of a labor union as expressed by its constitution and bylaws, the Court must ultimately resolve the matter so as to preserve on the one hand the rights of the union and on the other those of the individual members of that union. *Maloney v. United Mine Workers of America, supra.*

In answering this question of whether an act is ultra vires, we look first to the Constitution of Local 107.[7] Article I, Section 2, sets forth the "objectives" of the organization in broad terms. These objectives might be summed up as an effort to organize workmen, to educate them, to improve their condition and to improve the industry in which they work. The defendants pointed to no more specific provision in the constitution (nor can we find any) which would authorize the type of expenditure dealt with here.

It is true that from the general objectives and purposes of a particular trade union, certain ancillary powers reasonably necessary for their attainment may be implied. In determining whether a particular act falls within this admittedly broad latitude of action, the Court must take into consideration all of the factors surrounding it, i.e., the stated purpose of the action, its immediate effect, its possible future benefit to the union, etc. This is necessary in order to determine whether the union, in light of the authority derived from its constitution, has a sufficient interest in the action to empower it to so act. If it has, a court of law will not interfere regardless of the wisdom or propriety of the act. If it has not, a court of law must intervene at the behest of a single union member. *Maloney v. United Mine Workers of America, supra; Weiss v. Musical Mutual Protective Union*, 189 Pa. 446 (1899); *Leatherman v. Wolf, supra; West Virginia Pulp and Paper Co. v. Lewis, supra; Bacon v. Paradise, supra.*

In passing upon the question of whether a union has sufficient interest in criminal and civil suits brought against various officers for the theft of union funds, to spend large sums of its money on legal fees for those officers, the Court is admittedly without a Pennsylvania case directly on point. There are, however, two interesting English cases which passed upon a similar question and which held that such expenditures were beyond the power

[7] The only constitution under which Local 107 operates is that of the International Union. Moreover they have no bylaws.

of a union to make. *Alfin v. Hewlett*, 18 T. L. R. 664 ( ); *Orman v. Hutt*, 1 Ch. 98 (1914) (c. a.). These cases are persuasive.

Furthermore we feel that those cases involving the use of corporate funds to pay for the defense of officers charged with misconduct in office are helpful. Although this question again has not been passed upon in Pennsylvania, several other jurisdictions when faced with the problem have concluded that such expenditures are improper.[8]

In the case of *Jesse v. Four-Wheel Drive Auto Co.*, 177 Wisc. 627, 189 N. W. 276 (1922), the Supreme Court of Wisconsin held that such expenditures could only be authorized by a unanimous vote of the membership. See also *In re E. C. Warner Co.*, 232 Minn. 207, 45 N. W. 2d 388 (1950); *Solimine v. Hollander*, 120 N. J. Eq. 264, 19 A. 2d 344 (1941); *New York Dock Co., Inc., v. McCollom*, 173 Misc. 106, 16 N. Y. S. 2d 844 (1939); *Corporate Responsibility for Litigation Expense of Management*, 40 Cal. L. Rev. 104 (1952); *Washington, Litigation Expenses of Corporate Directors in Stockholder's Suits*, 40 Col. L. Rev. 431 (1940).

The only interest which Local 107 (as an organization dedicated to the objectives stated in its Constitution) would appear to have in the civil and criminal actions against these officers is an interest (1) in not losing the services of their officers (whom we must presume are competent) simply because someone wrongfully accuses them of misconduct or (2) in not having men closely associated with their union (whose conduct somewhat reflects upon the union) convicted of serious wrongs when they are not in

[8] In this regard, it is interesting to note that very recently the Pennsylvania Legislature passed a bill empowering a corporation to indemnify directors, officers and others against expenses in suits brought against them "by reason of being or having been directors or officers . . . of the corporation" *except* where he is adjudged liable for negligence or misconduct in performance of his duty. Act of April 18, 1945, P. L. 253, as amended October 13, 1959, 12 P.S. §1324.

fact guilty of these wrongs, or (3) not having officers in their union accused of serious wrongs by antiunion people, simply because they are officers of a union.

Assume for a moment that one of these officers was accused of evasion of personal income taxes, would not Local 107 have exactly these same interests in the outcome of such a suit? If in such a situation, a majority of the union were to pass a resolution affirming their confidence in that officer and asserting herein that the action by the United States was in reality an attempt "to break up and destroy our union" [and therefore] be it resolved that Local 107 go on record to help our [officer] in every way possible in [this] court [matter] by having Local 107 bear the legal costs of such actions which [is] in reality not directed at our [officer], but [is] directed at us, the members of Local 107, our good contracts, our good wages, and our good working conditions", a proper court of law upon an objection by a union member would independently pass upon the power of Local 107 to so spend its money and even presuming the good faith of the membership in passing such a resolution, would properly enjoin the expenditure as outside the legitimate aims and purposes of Local 107 as expressed in its Constitution.

In the light of the foregoing and upon consideration of the situation surrounding the present expenditures, in particular the nature and seriousness of the charges brought against the defendants by the State of Pennsylvania as well as by individual members of their union, the Court feels that such expenditures to pay for the legal expenses incurred by the defendant officers in the criminal and civil suits brought against them individually are expenses to be borne by the officers themselves and are beyond the power of Local 107 to make. Being beyond the powers of the union as derived from its Constitution, it follows that a mere majority vote at a regular union meeting can not authorize such expenditures. *West Virginia Pulp and Paper Co. v. Lewis, supra.*

There are undoubtedly situations in which a suit against a union officer would have a direct and injurious effect upon the union itself or would in reality be directed at the union. In such a situation the union would have the power to lend its financial support to such officer. When the question of whether the union has a sufficient interest to spend large sums of money to defend such a suit arises, it must ultimately be resolved by the court. Although a court will allow wide latitude to those in control of the union, it can not, by allowing unlimited latitude, abandon the right of a minority to see that the union spends its monies in accordance with its lawful aims and purposes as expressed in its Constitution and bylaws. Particularly is this true today, when the voice of the individual employee in fixing his own wages, hours and working conditions has necessarily been surrendered to the voice of the collective bargaining unit.

There is a further reason why the present Resolution is no defense here. Aside from its validity under Pennsylvania law, it is inconsistent with the aims and purposes of the Labor Management Reporting and Disclosure Act and violates the spirit of that Act. A stated purpose of the Act is "to *eliminate*. . . . improper practices on the part of labor organizations . . . and their officers." (Emphasis added.) To allow union a officer to use the power and wealth of the very union which he is accused of pilfering, to defend himself against such charges, is totally inconsistent with Congress' efforts to eliminate the undesirable element which has been uncovered in the labor-management field. To allow even a majority of members in that union to authorize such action, when, if the charges made against these defendants are true, it is these very members whom the officers have deceived, would be equally inconsistent with the Act. If some of those members have not been deceived by the defendants, but because of the immediate gains in their income and working conditions which Local 107 has won for them, they are content to accept as officers anyone who produces immediate results, regardless of what other wrongs those

officers may commit in so doing, this Court would still not feel constrained to bow to their will in the light of its duty to those members of Local 107 who place honesty above material gain as well as to the millions of others in the labor movement whose cause would be seriously injured by such an attitude.

Although we have not attempted to treat defendants' arguments individually, since we feel they are satisfactorily answered in this opinion, something should be said concerning their argument that the plaintiffs are here asking us to do that which Congress specifically refused to do when it failed to adopt Subsection 107(b) of the original Senate version of the Labor Bill (The Kennedy-Ives Bill), which specifically prohibited both unions and employers from directly or indirectly paying or advancing the costs of defense, of any of their officers . . . who [are] indicted for . . . any violation of any provision of the Bill." S. Rep. No 187, 86th Cong. First Session, 1959.

We are familiar with this argument in statutory construction. Although the value of such reasoning to discover the "intent" of Congress is often questionable, we can not of course ignore it, particularly in light of several Supreme Court rulings referred to by the defendants. *Manhattan Properties, Inc., v. Irving Trust Co.*, 291 U. S. 320 (1934); *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921); *Pennsylvania Railroad Co v. International Coal Co.*, 230 U. S. 184 (1913). Nevertheless there are reasons why we are not persuaded by their argument here.

First, the language contained in the Kennedy-Ives Bill is much broader than our holding in the present case. It is essential to an understanding of our position in this case that this point be made clear. That section quoted above would foreclose financial aid by the union to an officer in suits under the Act, under *any* circumstances. In our case we have expressly limited our holding *to the facts before us*. In the light of all of these facts we do not feel that the several actions brought against the defendants involve

any question of sufficient interest to Local 107 to warrant their expending large sums of union money to pay the legal costs of the defendants in these suits. That Congress refused to foreclose the right of a union under *any* circumstances to lend financial aid to an officer when sued under any section of the Kennedy-Ives Bill is not, we feel, a strong argument for the conclusion that under *no* circumstances could a union be prohibited from lending financial aid to an accused officer.

Second, in none of the cases cited by the defendants to support their argument as to the conclusion to be drawn from the omission of Section 107(b) were there two distinct bills involved. Here the Act finally passed by Congress (with modification) was the Landrum-Griffin House Bill and not the Kennedy-Ives Senate Bill. Strictly speaking, the Conference Committee did not amend the final Bill as to the provision in question, since it was never contained in it to begin with. Had the Kennedy-Ives Bill ultimately been adopted with Section 107(b) deleted, the defendants' argument would be more convincing.

Finally, even assuming that Congress intended to leave a union free to use its funds for the purpose of paying its officers legal expenses in actions brought against them under the new Act, if under the law of Pennsylvania, the state in which the union membership contractual relationship arose, such expenditures are illegal, a union officer could not consistent with his duty to the union (which duties ultimately flow from its Constitution) expend union funds for this purpose. This would follow unless we interpret the omission of this prohibition as creating an affirmative federal right in a union to so spend its funds, which right is intended to supersede any state law to the contrary. We flatly reject such an interpretation of the new Act.

CONCLUSION

At the time that permission was granted to the plaintiffs to file their complaint pursuant to §501(b) of the Act (see our Order of November 12, 1959), we specifically refused to pass upon the validity of any of the legal arguments raised by the defendants. Since the reasonable time requirements of §501(b) were clearly met as to at least one phase of the complaint,[9] and there appearing to have been "good cause" shown by the plaintiffs for filing suit, the Court permitted the complaint to be filed.[10]

However, since that time we have had the benefit of extensive legal arguments on the merits of the action and as a result have reached the conclusions above set forth with regard to the retrospective application of the Act. In view of these conclusions, which in effect result in stripping plaintiffs' complaint of all but those few paragraphs which state in general terms that the defendants' unlawful activities are continuing to the present time, we are compelled to order the plaintiffs to amend their complaint to state specific acts of misconduct in violation of §501 which have occurred *subsequent* to September 14, 1959, and which the union upon request has failed within a reasonable time to answer or otherwise correct. In the event that the plaintiffs fail to so amend within a time to be set in our order, their complaint will be dismissed with prejudice, excepting from such dismissal, of course, that part of their complaint which deals with the injunction discussed above.

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[9] The union has from the outset taken the position that expenditures for counsel fees are proper in light of the Resolution. Therefore, no purpose would be served by further delay in this matter, and the "reasonable time" requirement in §501(b) was met.

[10] Although the Act does not specify what is meant by "good cause" in §501(b), it would appear that such a preliminary requirement is intended as a safeguard to the union against harassing and vexatious litigation brought without merit or good faith. The fact that permission to file the complaint can be granted after an *ex parte* hearing would seem to support this view. The Court believed that the present suit satisfied this basic requirement.

A formal order will be entered enjoining the defendants from expending union funds for the defense of the cases presently pending against the defendants in either the Courts of the Commonwealth of Pennsylvania or in this Court. This ruling in no way attempts to pass upon the question of whether or not Local 107 may with propriety, by appropriate resolution, reimburse its officers for their legal expenses in the event they are exonerated from any wrongdoing in connection with the handling of union funds involved in the actions presently pending.[11]

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[11] See footnote (8), supra.

APPENDIX C

Amended Opinion of the United States Court of Appeals for the Third Circuit

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No. 13,262

Argued October 21, 1960

Before McLAUGHLIN, KALODNER and HASTIE, *Circuit Judges.*

OPINION OF THE COURT.

(Filed November 2, 1960)

PER CURIAM.

Nine members of the named union local, charging the local's governing officers with conspiring to cheat and defraud the local of large sums of money, were granted a preliminary injunction prohibiting said officers "from further using any of the funds of [Local 107] . . . to pay for any legal fees in the defense of civil or criminal actions presently pending [as of March 24, 1960] against them in the Court of the Commonwealth of Pennsylvania or in this court arising out of the alleged misuse of the funds of said Local 107 . . .". The charges in the state litigation arise out of the same alleged acts and conduct of the officers as are detailed in the complaint before us. No answer has as yet been filed by appellants.

The cause of action arises under the Labor Management Reporting and Disclosure Act of 1959, P. L. 86-257. That statute holds labor organizations, employers, and their officials "to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor management relations." 29 U. S. C. 401(a). Under "Safeguards for Labor Organizations", Section 501(a) makes it the duty of "The officers . . . to hold its [the labor organization] money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

Section 501(b) states that "When any officer . . . is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought

except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte." The trial court here allowed appellees leave to bring these proceedings. Local 107 was permitted to intervene as a party defendant and joined its officers in moving to have the complaint dismissed.

Under 501(c) "Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both."

In contesting the application for preliminary injunction the defendants relied on a resolution of the local purportedly authorizing the expenditures complained of. Judge Clary in a carefully considered opinion held that although the resolution was not within the prohibition of the last sentence of Section 501(a), above quoted, it was nevertheless invalid because it authorized action beyond the powers of the union as derived from its constitution and was inconsistent with the aims and purposes of the Labor Management Reporting and Disclosure Act. He specifically stated that: "This ruling in no way attempts to pass upon the question of whether or not Local 107 may with propriety, by appropriate resolution, reimburse its officers for their legal expenses in the event they are exonerated from any wrongdoing in connection with the handling of union funds involved in the actions presently pending."

Our own examination of the record and the 1959 Act satisfies us that under the facts the district court here has acted in complete accord with the letter and spirit of the Labor Management Reporting and Disclosure Act.

The order of the district court will be affirmed.